

1. The Karnataka Pawn Brokers (Amendment) Bill, 1979.
2. The Karnataka Motor Vehicles Taxation (Amendment) Bill, 1979.

OFFICIAL RESOLUTION

re: Ratification to the Constitution of India (45th Amendment) Bill, 1978.

SRI D. DEVARAJ USR:—There is one official resolution. I move:

“ That this House ratifies the amendment to the Constitution of India falling within the purview of the proviso to clause (2) of article 368 thereof, proposed to be made by the Constitution (Forty-fifth Amendment) Bill, 1978, as passed by the two Houses of Parliament and the short title of which has been changed into “ The Constitution (Forty-fourth Amendment) Act, 1978 ”.

MR. SPEAKER:—Motion moved. I will put it to vote. The Question is:

“ That this House ratifies the amendments to the Constitution of India falling within the purview of the proviso to clause (2) of article 368 thereof, proposed to be made by the Constitution (Forty-fifth Amendment) Bill, 1978, as passed by the two Houses of Parliament and the short title of which has been changed into “ The Constitution (Forty-fourth Amendment) Act, 1978 ”.

The Motion was adopted.

MR. SPEAKER:—The House will stand adjourned *Sine-die*.

(The House adjourned sine-die at Twenty five Minutes past Two of the Clock)

ANNEXURE I

THE CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL, 1978
ARRANGEMENT OF CLAUSES

CLAUSES

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|--|---|
| 1. Short title and commencement. | 26. Amendment of article 194. |
| 2. Amendment of article 19. | 27. Amendment of article 213. |
| 3. Amendment of article 22. | 28. Amendment of article 217. |
| 4. Amendment of article 30. | 29. Amendment of article 225. |
| 5. Omission of sub-heading after article 30. | 30. Amendment of article 226. |
| 6. Omission of article 31. | 31. Amendment of article 227. |
| 7. Amendment of article 31A. | 32. Amendment of article 239B. |
| 8. Amendment of article 31C. | 33. Omission of article 257A. |
| 9. Amendment of article 38. | 34. Insertion of new Chapter IV in Part XII. |
| 10. Substitution of new article for article 71. | 35. Omission of Part XIVA. |
| 11. Amendment of article 74. | 36. Amendment of article 329. |
| 12. Amendment of article 77. | 37. Omission of article 329A. |
| 13. Amendment of article 83. | 38. Amendment of article 352. |
| 14. Substitution of new article for article 103. | 39. Amendment of article 356. |
| 15. Amendment of article 105. | 40. Amendment of article 358. |
| 16. Amendment of article 123. | 41. Amendment of article 359. |
| 17. Amendment of article 132. | 42. Amendment of article 360. |
| 18. Amendment of article 133. | 43. Insertion of new article 361A. |
| 19. Amendment of article 134. | 44. Amendment of article 366. |
| 20. Insertion of new article 134A. | 45. Amendment of article 368. |
| 21. Amendment of article 139A. | 46. Amendment of article 371F. |
| 22. Amendment of article 150. | 47. Amendment of the Seventh Schedule, |
| 23. Amendment of article 166. | 48. Amendment of the Ninth Schedule. |
| 24. Amendment of article 172. | 49. Amendment of the Constitution (Forty-second Amendment) Act, 1976. |
| 25. Substitution of new article for article 192. | |

BILL No. 88 of 1978

THE CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL, 1978

A
BILL*further to amend the Constitution of India.*

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. Short title and commencement (1) This Act may be called the Constitution (Forty-fifth Amendment) Act, 1978.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. Amendment of article 19.—In article 19 of the Constitution,—

(a) in clause (1),—

(i) in sub clause (e), the word “and” shall be inserted at the end;

(ii) sub-clause (f) shall be omitted.

(b) in clause (5), for the words, brackets and letters “sub-clauses (d), (e) and (f)”, the words, brackets and letters “sub-clauses (d) and (e)” shall be substituted.

3. Amendment of article 22.—In article 22 of the Constitution,—

(a) for clause (4), the following clause shall be substituted, namely—

“(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention;

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court;

Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause(7).

*Explanation:—*In this clause, “appropriate High Court ” means,—

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi;

(ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court for that State; and

(iii) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf.

(b) in clause (7),—

(i) sub clause (a) shall be omitted;

(ii) sub-clause (b) shall be re-lettered as sub-clause (a); and

(iii) sub-clause (c) shall be re-lettered as sub-clause (b) and in the sub-clause as so re lettered, for the words, brackets letter and figure “sub-clause (a) of clause (4)”, the word, brackets and figure “clause (4)” shall be substituted.

4. Amendment of article 30. In article 30 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

“(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.”

5. Omission of sub-heading after article 30.— The sub-heading “right to Property” occurring after article 30 of the Constitution shall be omitted.

6. Omission of article 31.—Article 31 of the Constitution shall be omitted.

7. Amendment of article 31A.—In article 31A of the Constitution in clause (1), for the words and figures ‘article 14, article 19 or article 31’ the words and figures ‘article 14 or article 19’ shall be substituted.

8. Amendment of article 31C.—In article 31C of the Constitution,

(a) for the words and figures 'all or any of the principles laid down in part IV,' the words, brackets, letters and figures 'the principles laid down in clause (b) or clause (c) of article 39' shall be substituted;

(b) for the words and figures 'article 14, article 19 or article 31,' the words and figures 'article 14 or article 19,' shall be substituted;

(c) the words 'and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy;' shall be omitted.

9. Amendment of article 38.—Article 38 of the Constitution shall be renumbered as clause (1) thereof and after the clause as so renumbered the following clause shall be inserted, namely:—

'(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.'

Substitution of new article of article 71.—For article 71 of the Constitution the following article shall be substituted, namely:—

Matters relating to, or connected with the election of a President.—(1) All doubts and disputes arising out of or in connection with the election of a President or Vice President shall be referred to and decided by the Supreme Court whose decision shall be final.

(2) The election of a person as President or Vice President is void if the person elected is not qualified for election, or if the election is invalidly made, or if the person elected is not qualified to hold the office of President or Vice President, as the case may be, on or before the date of the election. The election of a person as President or Vice President shall not be invalidated by reason of that

subject to the provisions of this Constitution, Parliament may regulate any matter relating to or connected with the election of a President or Vice-President.

(3) The election of a person as President or Vice-President shall be void if in question on the ground of the existence of any vacancy or reason among the members of the electoral college

11 Amendment of article 74.—In article 74 of the Constitution, in clause (1) the following proviso shall be inserted at the end, namely:—

‘Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.’

12 Amendment of article 77.—In article 77 of the Constitution clause (4) shall be omitted.

13. Amendment of article 83. (1) In article 83 of the Constitution, in clause (2), for the words ‘six years’ in both the places where they occur, the words ‘five years’ shall be substituted

(2) The amendments made by sub-section (1) to clause (2) of article 83 shall apply also to the House of the People in existence on the date of coming into force of this section without prejudice to the power of Parliament with respect to the extension of the duration of that House under the proviso to that clause

14. Substitution of new article for article 103—For article 103 of the constitution, the following article shall be substituted, namely:

‘103. **Decision on question as to disqualifications of members.**—(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

15. Amendment of article 105. In article 105 of the Constitution in clause (3), for the words “shall be those of the House of Commons, of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution,” the words, figures and brackets “shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fifth Amendment) Act, 1978” shall be substituted.

16. Amendment of article 123.—In article 123 of the Constitution, clause (4) shall be omitted.

17. Amendment of Article 132. In article 132 of the Constitution,

(a) in clause (1), for the words "if the High Court certifies" the words, figures and letter "if the High Court certifies under article 134A" shall be substituted.

(b) clause (2) shall be omitted.

(c) in clause (3), the words "or such leave is granted" and the words "and with the leave of the Supreme Court, on any other ground" shall be omitted.

18. Amendment of article 133.—In article 133 of the Constitution, in clause (1), for the words "if the High Court certifies" the words, figures and letter "if the High Court certifies under article 134A..." shall be substituted.

19. Amendment of article 134.—In article 134 of the Constitution in sub clause (c) clause (1), for the word "certifies", the words, figure and letter "certifies under article 134A" shall be substituted.

20. Insertion of new article 134A.—After article 134 of the Constitution, the following articles shall be inserted namely.—

"134A. Certificate for appeal to the Supreme Court—Every High Court, passing or making a judgement, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134.—

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgement, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, subclause (c) of clause (1) of article 134, may be given in respect of that case".

21. Amendment of article 139A.—In article 139A of the Constitution, for clause (1), the following clause shall be substituted, namely.—

"(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an

application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself”.

22. Amendment of article 150.—In article 150 of the Constitution, for the words “after consultation with”, the words “with the concurrence of” shall be substituted.

23. Amendment of article 166.—In articles 166 of the Constitution, clause, (4) shall be omitted.—

24. Amendment of article 172.—(1) In article 172 of the Constitution, in clause (1), for the words “six years” in both the places where they occur, the words “five years” shall be substituted.

(2) The amendments made by sub-section (1) to clause (1) of article 172.—

(a) shall not apply to any existing State Legislative Assembly the period of existence whereof as computed from the date appointed for its first meeting to the date of coming into force of this section (both dates inclusive) is more than four and eight months but years every such Assembly shall, unless dissolved, stand dissolved sooner on the expiry of.—

(i) a period of four months from the date of coming into force of this section ; or

(ii) a period of six years from the date appointed for its first meeting.

whichever period expires earlier ;

(b) shall apply to every other existing State Legislative Assembly without prejudice to the power of Parliament with respect to the extension of duration of such Assembly under the to the said proviso clause (1).

Explanation I.—In its application to the Legislative Assembly of the State of Sikkim referred to in clause (b) of article 371F of the Constitution this sub-section shall have effect as if.—

(i) the date appointed for the first meeting of that Assembly were the 26th day of April, 1975 ; and

(ii) the references in clause (a) of this sub section to “four years and eight months” and “six years” were references to “three years and eight months” and “five years” respectively.

Explanation II.—In this sub-section, “existing State Legislative Assembly” means the Legislative Assembly of a State in existence on the date of coming into force of this section.

25. Substitution of new article for article 192.—For article 192 of the Constitution, the following article shall be substituted, namely:—

“192. **Decision on questions as to disqualifications of members.**—

(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion”.

26. Amendment of article 194.—In article 194 of the Constitution, in clause (3), for the words “shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution”, the words, figures and brackets “shall be those of that House and of its members and committee immediately before the coming into force of section 26 of the Constitution (Forty-fifth Amendment) Act, 1978” shall be substituted.

27. Amendment of article 213.—In article 213 of the Constitution, clause (4) shall be omitted.

28. Amendment of article 217.—In article 217 of the Constitution, in clause (2),—

(a) in sub-clause (b), the word “or” occurring at the end shall be omitted;

(b) sub-clause (c) shall be omitted ;

(c) in the *Explanation*, clause (a) shall be re-lettered as clause (aa) and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:—

“(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a me-

member of a tribunal or any post, under the Union or a State, requiring special knowledge of law,".

29. Amendment of article 225.— In article 225 of the Constitution, the following proviso shall be inserted at the end, namely:—

“Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this constitution shall no longer apply to the exercise of such jurisdiction.”.

30. Amendment of article 226.— In article 226 of the Constitution,—

(a) in clause (1), for the portion beginning with the words “writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them” and ending with the words “such illegality has resulted in substantial failure of justice.”, the following shall be substituted, namely:—

“writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of the enforcement of any of the rights conferred by Part III and for any other purpose.”,

(b) for clauses (3), (4), (5) and (6), the following clause shall be substituted, namely:—

“(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or as the case may be, the expiry of the said next day, stand vacated.”.

(c) clause (7) shall be renumbered as clause (4).

31. Amendment of article 227.—In article 227 of the Constitution,—

(a) for clause (1), the following clause shall be substituted namely:—

“(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.”

(b) clause (5) shall be omitted.

32. Amendment of article 239B.—In article 239B of the Constitution, clause (4) shall be omitted.

33. Omission of article 257A.—Article 257A of the Constitution shall be omitted.

34. Insertion of new Chapter IV in Part XII.—In Part XII of the Constitution, after Chapter III, the following Chapter shall be inserted namely:—

‘ CHAPTER IV.—RIGHT TO PROPERTY

300A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.”

35. Omission of Part XIVA.—Part XIVA of the Constitution shall be omitted.

36. Amendment of article 329.—In article 329 of the Constitution, in the opening portion, the words, figures and letter “but subject to the provisions of article 329A” shall be omitted.

37. Omission of article 329A.—Article 329A of the Constitution shall be omitted.

38. Amendment of article 352.—In article 352 of the Constitution

(a) in clause (1). —

(i) for the words “internal disturbance”, the words “armed rebellion” shall be substituted;

(ii) the following *Explanation* shall be inserted at the end, namely:—

“*Explanation*.— A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.

(b) for clauses (2), (2A) and (3), the following clauses shall be substituted, namely:—

“(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation(not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (4);

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(6) For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,—

(a) to the Speaker, if the House is in session, or

(b) to the President if the House is not in session,
a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, as the case may be, by the President, for the purpose of considering such resolution.”;

(c) clause (4) shall be renumbered as clause (9) and in the clause as so renumbered, for the words “internal disturbances” in both the places where they occur, the words “armed rebellion” shall be substituted;

(d) clause (5) shall be omitted.

39. Amendment of article 356.—In article 356 of the Constitution,

(a) in clause (4),

(i) for the words, brackets and figure “one year from the date of the passing of second of the resolutions approving the Proclamation under clause (3)”, the words “six months from the date of issue of the Proclamation” shall be substituted;

(ii) in the first proviso, for the words “one year”, the words “six months” shall be substituted;

(iii) in the second proviso, for the words “one year”, the words “six months” shall be substituted;

(b) for clause (5), the following clause shall be substituted, namely:—

“(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless—

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and,

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.”.

40. Amendment of article 358. Article 358 of the Constitution shall be renumbered as clause (1) of that article, and—

(a) in clause (1) as so renumbered,—

(i) in the opening portion, for the words “while a Proclamation of Emergency is in operation”, the words “While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation” shall be substituted;

(ii) In the proviso, for the words “where a Proclamation of Emergency”, the words “where such Proclamation of Emergency” shall be substituted;

(b) after clause (1) as so renumbered, the following clause shall be inserted, namely :—

“(2) Nothing in clause (1) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made ; or

(b) to any executive action taken otherwise than under a law containing such a recital.”.

41. Amendment of article 359. In article 359 of the Constitution,

(a) in clauses (1) and (1A), for the words and figures “the rights conferred by Part III”, the words, figures and brackets “the rights conferred by Part III (except article 21)” shall be substituted;

(b) after clause (1A) the following clause shall be inserted, namely :—

“(1B) Nothing in clause (1A) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made ; or

(b) To any executive action taken otherwise than under a law containing such a recital”.

42. Amendment of article 360. In article 360 of the Constitution,

(a) for clause (2), the following clause shall be substituted, namely :—

“(2) A proclamation issued under clause (1)—

(a) may be revoked or varied by a subsequent Proclamation ;

(b) shall be laid before each House of Parliament ;

(c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution

with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.” :

(b) clause (5) shall be omitted.

43. **Insertion of new article 361 A.**—After article 361 of the Constitution, the following article shall be inserted, namely :—

361A. Protection of publication of proceedings of Parliament and State Legislatures. (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice :

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation.—In this article, “newspaper” includes a news agency report containing material for publication in a newspaper.”

44. **Amendment of article 366.**—Article 366 of the Constitution shall be renumbered as clause (2) of that article, and before clause (2) as so renumbered, the following clause shall be inserted, namely:—

‘(1) In the Preamble to this Constitution,—

(1) the expression “REPUBLIC”, as qualified by the expression “SECULAR”, means a republic in which there is equal respect for all religions; and

(2) the expression “REPUBLIC”, as qualified by the expression “SOCIALIST”, means a republic in which there is freedom from all forms exploitation, social, political and economic.’

45. Amendment of article 368—In article 368 of the Constitution, (a) in clause (2), after the proviso, the following proviso shall be inserted, namely,—

“Provided further that if such amendment—

(a) seeks to make any change which, if made, would have the effect of—

(i) impairing the secular or democratic character of this Constitution; or

(ii) abridging or taking away the rights of citizens under Part III; or

(iii) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of States on the basis of adult suffrage; or

(iv) compromising the independence of the judiciary; or

(b) seeks to amend this proviso.

the amendment shall also require to be approved by the people of India at a referendum under clause (4).”:

(b) for clauses (4) and (5), the following clauses shall be substituted namely:—

(4) The referendum for the purpose of seeking the approval of the people of India for any amendment of the nature referred to in the second proviso to clause (2) shall be through a poll, and—

(i) all persons who are for the time being eligible to be voters under article 326 at elections to the House of the People shall be entitled to vote at such poll; and

(ii) any such amendment shall be deemed to have been approved by the people of India if such amendment is approved by a majority of the voters voting at such poll and the voters voting at such poll constitute not less than fifty-one per cent of the voters entitled to vote at such poll.

(5) The superintendence, direction and control of the preparation of the rolls of voters for, and the conduct of, every referendum under this article shall vest in the Election Commission and the result of such referendum as declared by the Election Commission shall not be called in question in any court.

(6) Subject to the provisions of clauses (4) and (5), Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, referenda under this article, including the preparation of the rolls of voters.”.

46. **Amendment of article 371F** —In article 371F of the Constitution, in clause (c), for the words “six years”, the words “five years” shall be substituted, and for the words “five years” in both the places where they occur, the words “four years” shall be substituted.

47. **Amendment of the Seventh Schedule.**— In the Seventh Schedule to the Constitution,—

(a) in List I—Union List, entry 2A shall be omitted;

(b) in List II—State List,—

(i) in entry 1, for the words “the use of any naval, military or air force or any other armed forces of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof”, the words “the use of naval, military or air force or any other armed forces of the Union” shall be substituted;

(ii) for entry 2, the following entry shall be substituted namely:—

“2. Police, including railway and village police.”;

(iii) after entry 10, the following entry shall be inserted, namely:—

“11. Education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.”;

(iv) after entry 18, the following entry shall be inserted namely:—

“19. Forests.”;

(v) in entry 41, for the words “State public services”, the words, figures and letter “State public services subject to the provisions of entry 11B of List III” shall be substituted;

(c) in List III—Concurrent List,—

(i) after entry 11A, the following entry shall be inserted, namely:—

“11B. Adjudication or trial by tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State or of a local or other authority subject to the control of a State Government.”;

(ii) entry 17A shall be omitted;

(iii) for entry 25, the following entry shall be substituted, namely:—

“25. Vocational and technical training of labour.”.

48. Amendment of the Ninth Schedule.—In the Ninth Schedule to the Constitution, entries 87, 92 and 130 shall be omitted.

49. Amendment of the Constitution (Forty-second Amendment) Act, 1976.—In the Constitution (Forty-second Amendment) Act, 1976, sections 18, 19, 21, 22, 31, 32, 34, 35, 58 and 59 shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Recent experience has shown that the fundamental rights, including those of life and liberty, granted to citizens by the Constitution are capable of being taken away by a transient majority. It is, therefore, necessary to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live. This is one of the primary objects of this Bill.

2. It is, therefore, proposed to provide that certain changes in the Constitution which would have the effect of impairing its secular or democratic character, abridging or taking away fundamental rights, prejudicing or impeding free and fair elections on the basis of adult suffrage and compromising the independence of judiciary, can be made only if they are approved by the people of India by a majority of votes at a referendum in which at least fifty-one per cent of the electorate participate. Article 368 is being amended to ensure this.

3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to article 19 and article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.

6. A Proclamation of Emergency under article 352 has virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and enabling the rights of the

citizen to move the courts for the enforcement of fundamental rights—including the right to life and liberty—to be suspended. Adequate safeguards are, therefore, necessary to ensure that this power is properly exercised and is not abused. It is, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

7. Further, in order to ensure that a Proclamation is issued only after due consideration, it is sought to be provided that an Emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet. In addition, as a Proclamation of Emergency virtually has the effect of amending the Constitution, it is being provided that the Proclamation would have to be approved by the two Houses of Parliament by the same majority which is necessary to amend the Constitution and such approval would have to be given within a period of one month. Any such Proclamation would be in force only for a period of six months and can be continued only by further resolutions passed by the same majority. The Proclamation would also cease to be in operation if a resolution disapproving the continuance of the Proclamation is passed by Lok Sabha. Ten per cent, or more of the Members of Lok Sabha can requisition a special meeting for considering a resolution for disapproving the Proclamation.

8. As a further check against the misuse of the Emergency provisions and to put the right to life and liberty on a secure footing, it would be provided that the power to suspend the right to move the court for the enforcement of a fundamental right cannot be exercised in respect of the fundamental right to life and liberty. The right to liberty is further strengthened by the provision that a law for preventive detention cannot authorise, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there is sufficient cause for such detention. An additional safeguard would be provided by the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations of the Chief Justice of that High Court.

9. A special provision is being made guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the State Legislatures. The provision with regard to the breakdown of the constitutional machinery in the States is being amended so as to provide that a Proclamation issued under

article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However, if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This is subject to the existing limit of three years. These changes would ensure that democratic rule is restored to a State after the minimum period which will be necessary for holding elections.

10. With a view to avoiding delays, it is proposed to amend articles 132, 133 and 134 and insert a new article 134A to provide that a High Court should consider the question of granting a certificate for appeal to Supreme Court immediately after the delivery of the judgment, decree, final order or sentence concerned on the basis of an oral application by a party or, if the High Court deems fit so to do, on its own motion. Cases of special leave to appeal by Supreme Court will be left to be regulated exclusively by article 136:

11. The other amendments proposed in the Bill are mainly for removing or correcting the distortions which came into the Constitution by reason of amendments enacted during the period of the Internal Emergency.

12. The Bill seeks to achieve the above objects. The notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;

SHANTI BHUSHAN.

The 9th May, 1978.

Notes on clauses

1. *Clauses 2, 4, 5, 6, 7, sub-clause (b) of clause 8 and clause 34.—*

The object of the amendments proposed in these provisions is to take away the right to property from the category of fundamental rights and make the same a right which can be regulated by ordinary law. Clause 2 (a) (ii) seeks to omit sub-clause (f) of clause (1) of article 19 which guarantees to citizens the right to acquire, hold and dispose of property. Clause 6 seeks to omit article 31 relating to the right to property. The safeguard contained in article 31 relating to acquisition of property of an educational institution established and administered by a minority is sought to be incorporated in article 30 by the amendment to that article proposed in clause 4. Clause 34 seeks to insert a

new article 300A in Part XII of the Constitution to provide that no person shall be deprived of his property save by authority of law. The amendments proposed in clause 2 (a) (i), clause 2 (b), clause 5, clause 7 and clause 8 (b) are of a consequential nature.

2. *Clause 3.*—This clause seeks to amend the provisions as to preventive detention contained in article 22.

(a) for restricting the maximum period for which a person may be detained without obtaining the opinion of the Advisory Board from three months to two months;

(b) for providing that an Advisory Board shall consist of a Chairman and not less than two other members, that the composition of an Advisory Board shall be in accordance with the recommendations of the Chief Justice of the appropriate High Court (that is to say, the High Court for Delhi in the case of detention orders made by the Central Government or officers subordinate to the Central Government; the High Court for a State in the case of detention orders made by a State Government or officers subordinate to a State Government; and such High Court as may be specified by Parliament by law in the case of orders of detention made by the Administrator of a Union territory or officers subordinate to him), and that the Chairman of an Advisory Board shall be a sitting Judge of the appropriate High Court and the other members of an Advisory Board shall be sitting or retired Judges of any High Court; and

(c) for abolishing the system of preventive detention without reference to an Advisory Board provided in sub-clause (a) of clause (7) of article 22.

3. *Clauses 4, 5, 6, and 7.*—See paragraph 1 above.

4. *Clause 8.*—The amendment proposed in sub-clause (a) of this clause, is for confining the protection afforded by article 31C only to laws giving effect to the policy of the State towards securing the directive principles specified in clauses (b) and (c) of article 39. This would have the effect of restoring the article to the form in which it stood before the amendment made to the article by the Constitution (Forty-second Amendment) Act, 1976 came into force. The amendment proposed in sub-clause (b) is consequential to the omission of article 31 (see paragraph 1 above). The amendment proposed in sub-clause (c) is for omitting the portion relating to declaration contained in article 31C which was struck down by the Supreme Court in *Kesavananda Bharati vs. the State of Kerala* (1973 Supp. SCR 1),

5. *Clause 9.*—This clause seeks to insert a new directive principle in article 38 to the effect that the State shall strive to minimise

inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

6. *Clause 10.*—Article 71 as originally enacted gave jurisdiction to the Supreme Court to inquire into all doubts and disputes arising out of or in connection with the election of a President or Vice-President. The Constitution (Thirty-ninth Amendment) Act, 1975, substituted the article by a new article leaving it to Parliament to determine the authority or body which may inquire into such doubts and disputes. This clause seeks to restore the position as it obtained before the Constitution (Thirty-ninth Amendment) Act, 1975, came into force.

7. *Clause 11.*—This clause seeks to amend clause (1) of article 74 of the Constitution to provide that the President may require the Council of Ministers to reconsider any advice tendered by them and that the President shall act in accordance with the advice tendered after such reconsideration.

8. *Clauses 12 and 23.*—The Constitution (Forty-second Amendment) Act included a new clause (4) in article 77 and a new clause (4) in article 166 to take away the power of courts to compel production of rules relating to transaction of the business of the Government of India and the Government of a State. Clause 12 seeks to omit the said clause (4) of article 77 while clause 23 seeks to omit the said clause (4) of article 166.

9. *Clauses 13, 24 and 46.*—These clauses seek to amend articles 83, 172 and 371F respectively of the Constitution to restore the term of the Lok Sabha and the State Legislative Assemblies to five years with necessary saving provisions.

10. *Clauses 14 and 25.*—These clauses seek to substitute articles 103 and 192 (relating respectively to decisions on questions as to disqualification of Members of Parliament and State Legislatures) to provide that decisions on question as to disqualification of Members shall be in accordance with the opinion of the Election Commission and thereby restore the position as it obtained prior to the Constitution (Forty-second Amendment) Act.

11. *Clauses 15 and 26.*—These clauses seek to amend article 105 and article 194 (relating respectively to the privileges of Houses of Parliament and of State Legislatures). The amendments are for the purpose of omitting the references to the House of Commons in these articles.

12. *Clauses 16, 27 and 32.*—The Constitution (Thirty-eighth Amendment) Act, 1975, inserted a new clause (4) in article 123, article 213 and article 239B (relating respectively to the powers of the President, Governor of a State and Administrator of a Union territory to promulgate Ordinances) to specify expressly that the satisfaction of the President, Governor or Administrator regarding the existence of the circumstances necessary for taking immediate action by promulgation of an Ordinance shall be final and conclusive. The said new clauses are proposed to be omitted.

13. *Clauses 17, 18, 19 and 20.*—At present appeal lies under article 132 of the Constitution to the Supreme Court in certain cases upon the High Court granting a certificate under that article. Where the High Court has refused to give such a certificate, the Supreme Court may grant special leave. Under article 133, appeal lies to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court if the High Court grants a certificate under that article. Under article 134 (1) (c), an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court. It is proposed to amend articles 132, 133 and 134 and insert a new article 134A to provide that the High Court should consider the question of granting of certificate immediately on the delivery of the judgment, decree, final order, or sentence concerned on the basis of an oral application by a party or, if the High Court deems it fit so to do, on its own motion. It is also proposed to omit the provisions in article 132 relating to grant of special leave by Supreme Court in cases where the High Court refuses to give a certificate. Cases of special leave to appeal by Supreme Court will thus be left to be regulated exclusively by article 136 of the Constitution.

14. *Clause 21.*—This relates to article 139A which was inserted by the Constitution (Forty-second Amendment) Act. Under clause (1) of this article, if the Supreme Court is satisfied, on an application made by the Attorney-General of India, that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself. The Supreme Court can take action under this provision only if an application is made by the Attorney-General. Clause (1) of article 139A is sought to be amended so as to enable a party to any such case also to make a similar application to the Supreme Court.

15. *Clause 22.*—Under article 150, as amended by the Constitution (Forty-second Amendment) Act the form in which accounts of the Union and the States shall be kept shall be such as may be prescribed by the President after consultation with the Comptroller and Auditor-General of India. This clause seeks to amend article 150 to provide that the form should be prescribed with the concurrence of the Comptroller and Auditor-General and not merely after consultation.

16. *Clause 23.*—See paragraph 8 above.

17. *Clause 24.*—See paragraph 9 above.

18. *Clause 25.*—See paragraph 10 above.

19. *Clause 26.*—See paragraph 11 above.

20. *Clause 27.*—See paragraph 12 above.

21. *Clause 28.*—Sub-clause (b) of this clause seeks to omit sub-clause (c) of clause (2) of article 217 of the Constitution which was inserted by the Constitution (Forty-second Amendment) Act for making persons who, in the opinion of the President, are distinguished jurists, eligible for appointment as Judges of High Courts. The amendment proposed in sub-clause (a) of this clause is of a consequential and drafting nature,

Sub-clause (c) of this clause seeks to amend the Explanation to clause (2) of article 217 for the purpose of removing an anomaly. Under clause (a) of the Explanation as it exists now, any period during which a person has, after becoming an advocate, held judicial office or the office of the member of a tribunal or any post, under the Union or a State, requiring special knowledge of law will be included in computing the period during which he has been an advocate for the purposes of determining his eligibility for appointment as a Judge of a High Court. There is no corresponding provision in the Explanation in relation to a person who started as a Judge without being an advocate and who subsequently became an advocate or a member of a tribunal or the holder of any post under the Union or a State requiring special knowledge of law.

22. *Clause 29.* The proviso to article 225 of the Constitution as originally enacted was intended to remove the bar that existed before the commencement of the Constitution in respect of the original jurisdiction of the High Courts in revenue matters. The Constitution (Forty-second Amendment) Act omitted this proviso. This clause seeks to restore the said proviso.

23 Clause 30.—Subject to a modification, this clause seeks to restore, article 226 to the form in which it was prior to its amendment by the Constitution (Forty-second Amendment) Act. The modification is for the purpose of providing that in cases in which an interim order is made, *ex parte*, on or in any proceedings relating to a petition under article 226, the party against whom such order is made may make an application to the High Court for the vacation of such order and furnish a copy of such application to the party in whose favour such order has been made or the counsel of such party. It is also being provided that if the High Court fails to dispose of the application within a period of two weeks from the date on which it is received by the High Court or from the date on which the copy of such application is furnished to the party against whom it is made, whichever is later, the interim order shall, on the expiry of the said period, stand vacated. Where the High Court is closed on the last day of the said period, the interim order will stand vacated only if the application is not disposed of before the expiry of the next day on which the High Court is open.

24 Clause 31.—This clause seeks to restore article 227 of the Constitution (relating to power of superintendence of High Court, to the form in which it was prior to its amendment by the Constitution (Forty-second Amendment) Act.

25 Clause 32.—See paragraph 12 above.

26 Clause 33.—This clause seeks to omit article 257A of the Constitution relating to development of armed forces or other forces of the Union to States. The said article was inserted in the Constitution by the Constitution (Forty-second Amendment) Act.

27 Clause 34.—See paragraph 1 above.

28 Clause 35.—This clause seeks omit Part XIVA of the Constitution relating to administrative tribunals and tribunals for other matters in place of High Courts. The said Part XIVA was inserted by the Constitution (Forty-second Amendment) Act.

29 Clause 36 and 37.—Clause 37 seeks to omit article 329A relating to special provisions as to elections to Parliament in the case of Prime-Minister and Speaker. The said article 329A was inserted by the Constitution (Thirty-ninth Amendment) Act, 1975. The Amendment to article 329 proposed in clause 36 is of a consequential nature is for the purpose of omitting the reference therein to article 329A.

30 Clause 38.—This clause seeks to amend article 352 relating to Proclamation of Emergency to provide for various safeguards against abuse of powers under the article. In the first place, the ground of "internal disturbance" is being substituted by the ground

of 'armed rebellion' to exclude scope for Proclamation of Emergency in cases of internal disturbance not involving armed rebellion. In the second place, it is being provided that the President shall not issue a Proclamation of Emergency unless the decision of the Cabinet that such a Proclamation may be issued has been communicated to him in writing. In the third place, it is being provided that the Proclamation of Emergency would require to be approved within a period of one month (instead of two months as provided at present) by resolution of both the Houses of Parliament and that such resolution should be by a majority of the total membership of each House and not less than two-thirds of the majority of the members present and voting in each House instead of a simple majority provided at present. In the fourth place, it is being provided that for the continuance of the Emergency, approval by resolution of both Houses would be required every six months. In the fifth place, provision is being made that proclamation of Emergency would cease to be operative whenever a resolution to that effect is adopted by the Lok Sabha by a simple majority of the members of the House present and voting. It is also being provided that not less than one tenth of the total membership of the Lok Sabha may, by notice, requisition a meeting of the Lok Sabha for the purpose of considering the continuance of a Proclamation of Emergency.

Provision has also been made for the omission of clause (5) of article 352, which was inserted by the Constitution (Thirty-eighth Amendment) Act, 1975 and which makes the satisfaction of the President as to the existence of a grave Emergency necessitating the issue of a Proclamation of Emergency final.

31 Clause 39.—This clause seeks to amend article 356 of the Constitution relating to the President's power to issue a Proclamation in case of failure of constitutional machinery in a State. The article is being amended to specify that such a Proclamation will, upon its being approved first by resolutions by both Houses, continue for six months from the date of issue of Proclamation and that upon its being approved likewise on a second occasion, it would continue for a further period of six months. The article is also being amended to specify that a resolution

with respect to the continuance in force of a Proclamation under the article for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless a Proclamation of Emergency is in operation at the time of the passing of such resolution and the Election Commission certifies that the continuance in force of the Proclamation under the

article during the period specified in such resolution is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned.

32. *Clause 40.*—This clause seeks to amend article 358 relating to the suspension of provisions of article 19 during Emergencies. By virtue of the amendments, the provisions of article 19 will become suspended only in the case of a Proclamation of Emergency issued on the ground of war or external aggression and not in the case of a Proclamation of Emergency issued on the ground of armed rebellion. Further, the suspension of article 19 under article 358 will not apply in relation to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made or to any executive action taken otherwise than under a law containing such a recital.

33. *Clause 41.*—This clause seeks to make two amendments to article 359 of the Constitution relating to suspension of the enforcement of the rights conferred by Part III during Emergencies. The first amendment is for providing that the enforcement of the life and personal liberty under article 21 cannot be suspended. The second amendment is for providing that the suspension of the enforcement of any right under the article will not apply in relation to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made or to any executive action taken otherwise than under a law containing such a recital.

34. *Clause 42.*—This clause seeks to make two amendments in article 360 of the Constitution. The first amendment is of a drafting nature and is for the purpose of making the provisions of clause (2) of article 360 self-contained. At present the said clause (2) incorporates by reference the provisions of clause (2) of article 352. Since clause (2) of article 352 is being amended, it has become necessary to make clause (2) of article 360 self-contained. The second amendment is for omitting clause (5) of article 360 which was inserted by the Constitution (Thirty-eighth Amendment) Act and which makes the satisfaction of the President as to the arising of a situation whereby the financial stability or credit of India or any part of the territory thereof is threatened, final and conclusive.

35. *Clause 43.*—This clause seeks to insert a new article 361A in the Constitution. The new article provides for constitutional protection in respect of publication of proceedings of Parliament and of State Legislatures. The Protection will not be available in respect of proceedings of secret sittings.

36. *Clause 44.*—This clause seeks to amend article 366 of the Constitution to include therein provisions for explaining the significance of the expressions “SECULAR” and “SOCIALIST” as used in the Preamble.

37. *Clause 45.*—This clause seeks to amend article 368 of the Constitution relating to the power of Parliament to amend the Constitution. Apart from omitting clauses (4) and (5) which were inserted in the article by the Constitution (Forty-second Amendment) Act, 1976, for taking away the jurisdiction of the courts in respect of validity of constitutional amendments, this clause seeks to provide that amendments which would have the effect of—

(a) impairing the secular or democratic character of the Constitution ; or

(b) abridging or taking away the rights of citizens under Part III ; or

(c) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of the States on the basis of adult suffrage : or

(d) compromising the independence of the judiciary,

would require to be approved by the people of the India at a referendum. Any amendment for modifying or omitting the requirement as to such referendum would also require to be approved at such a referendum. In place of the existing clauses (4) and (5) of article 368, sub-clause (b) of clause 45 seeks to substitute three new clauses (4), (5) and (6). New clause (4) provides that every referendum will be through a poll. All persons eligible to be voters at elections to Lok Sabha will be eligible to vote. If fifty-one per cent. or more of the eligible voters vote at such a poll and a majority of the voters voting at such a poll approve an amendment, the amendment will be deemed to have been approved. New clause (5) seeks to vest the superintendence, direction and control of referenda in the Election Commission. The result of a referendum as declared by the Election Commission will be final. New clause (6) seeks to empower Parliament to provide by law for matters relating to or in connection with referenda.

38. *Clause 46.*—See Paragraph 9.

39. *Clause 47.*—This clause seeks to amend the Seventh Schedule to the Constitution. Sub-clause (a) of this clause seeks to omit entry 2A of the Union List relating to deployment of armed forces of the Union to States. The omission is consequential to the omission of article 257A (See paragraph 26 above).

Sub-Clause (b) seeks to amend the State List. The amendment proposed in items (i) and (ii) to entries 1 and 2 of the State List are consequential to the proposed omission of entry 2A of the Union List. The amendments proposed in items (iii) and (iv) are for including the entries relating to education and forest in the State List and for restoring the position as it obtained before the Constitution (Forty-second Amendment) Act. The amendment in item (v) to entry 41 of the State List is consequential to the insertion of a new entry 11B in the Concurrent List under sub-clause (c) (i).

Sub-Clause (c).—Item (i) of this sub-clause seeks to insert a new entry relating to adjudication or trial by tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State or of a local or other authority subject to the control of a State Government. The proposed entry and entry 70 of the Union List will facilitate the creation of common tribunals for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State or of a local or other authority subject to the control of the Central Government or a State Government.

Item (ii) of sub-clause (c) seeks to omit entry 17A of the Concurrent List relating to forests and it is consequential to the inclusion of forest in the State List.

Item (iii) of sub-clause (c) seeks to substitute a new entry for entry 25 of the Concurrent List and it is consequential to the inclusion of education in the State List.

40. *Clause 48.*—This clause seeks to amend the Ninth Schedule for omitting entries 87 [the Representation of the People Act, 1951, the Representation of the People (Amendment) Act, 1974, and the Election Laws (Amendment) Act, 1975], 92 (the Maintenance of Internal Security Act, 1971) and 130 (the Prevention of Publication of Objectionable Matter Act, 1976).

41. *Clause 49.*—Sections 18, 19, 21, 22, 31, 32, 34, and 35 of the Constitution (Forty-second Amendment) Act, have not been brought into force. In addition to omitting these sections, this Clause seeks to omit section 58 (special provisions as to pending petitions under article 226) and section 59 (power of the President to remove difficulties) of the said Act.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

* * * * *

19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right—

- (e) to reside and settle in any part of the territory of India ;
- (f) to acquire, hold and dispose of property ; and

* * * * *

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall effect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe.

* * * * *

22. Protection against arrest and detention in certain cases. (1)

* * * * *

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7) ; or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

* * * * *

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (1) ;

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention ; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

* * * * *

Right to Property

31. Compulsory acquisition of property.—(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law ; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash :

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(2B) Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2).

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding

anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

Savings of Certain Laws

31. **Saving of laws providing for acquisition of estates, etc.**

(1) Notwithstanding anything contained in article 13, not law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent :

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such, land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

* * * * *

31C. Saving of laws giving effect to certain directive Principles. Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 ; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy :

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

* * * * *

38. State to secure a special order for the promotion of welfare of the people—The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

* * * * *

71. Matters relating to are connected with the election of a President or Vice-President—(1) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President, including the grounds on which such election may be questioned.

Provided that the election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

(2) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by such authority or body and in such manner as may be provided for by or under any law referred to in clause (1)

(3) The validity of any such law as is referred to in clause (1) and decision of any authority or body under such law shall not be called in question in any court.

(4) If the election of a person as President or Vice-President is declared void under any such law as is referred to in clause (1), acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of such declaration shall not be invalidated by reason of that declaration.

* * * * *

74. Council of Ministers to aid and advise President—(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

* * * * *

77. Conduct of business of the Government of India—

(1) * * * * *

(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of India.

* * * * *

88. Duration of House of Parliament—

(1) * * * *

(2) The House of the People, unless sooner dissolved, shall continue for six years from the date appointed for its first meeting and no longer and the expiration of the said period of six years shall operate as a dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

* * * *

103. Decision on questions as to disqualification—(1) If any question arises—

(a) as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, or

(b) as to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as, and for being, a member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification,

the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.

* * * *

105. Powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof.—(1)

* * * *

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by

Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution

* * * * *

123. Power of President to promulgate Ordinances during recess of Parliament.—

(1) * * * * *

(4) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.

* * * * *

132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground.

Explanation.—For the purpose of this article, the expression “final order” includes and order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

* * * * *

134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

* * * * *

(c) certifies that the case is a fit one for appeal the Supreme Court :

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

* * * * *

139A. Transfer of certain cases.—(1) If, on an application made by the Attorney-General of India, the Supreme Court is satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself.

* * * * *

150. Form of accounts of the Union and of the States. The accounts of the Union and of the States shall be kept in such form as the President may, after consultation with the Comptroller and Auditor-General of India, prescribe.

* * * * *

166. Conduct of business of the Government of a State. (1)*

* * *

(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of the State.

* * * * *

172. Duration of State Legislatures.— (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for six years from the date appointed for its first meeting and no longer and the expiration of the said period of six years shall operate as a dissolution of the Assembly.

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

* * * *

192. Decision on questions as to disqualification.—(1) If any question arises—

(a) as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, or

(b) as to whether a person, found guilty of a corrupt practice at an election to a House of the Legislature of a State under any law made by Parliament, shall be disqualified for being chosen as and for being a member of either House of Parliament or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification,

the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.

* * * *

194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof.— (1) * * *

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

* * * *

213. Power of Governor to promulgate Ordinances during recess of Legislature.—(1) * * *

(4) Notwithstanding anything in this Constitution, the satisfaction of the Governor mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.

* * * *

217. Appointment and conditions of the office of a Judge of a High Court.—(1) * * *

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

* * * *

(b) has for at least ten years been an advocate of High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

*Explanation.—*For the purposes of this clause—

(a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate ;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

* * * *

225. Jurisdiction of Existing High Courts.—Subject to the provisions of this constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

226. Power of High Court to issue certain writs.—(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of **habeas corpus, mandamus, prohibition, quo warranto and certiorari**, or any of them. —

(a) for the enforcement of any of the rights conferred by the provisions of Part III; or

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in sub-clause(b) where such illegality has resulted in substantial failure of justice.

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(3) No petition for the redress of any injury referred to in sub-clause(b) or sub-clause(c) of clause(1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

(4) No interim order (whether by way of injunction of stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause(1) unless —

(a) copies of such petition and of all documents in support of the plea for such interim order are furnished to the party against whom such petition is filed or proposed to be filed; and

(b) opportunity is given to such party to be heard in the matter.

(5) The High Court may dispense with the requirements of sub-clauses (a) and (b) of clause(4) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being caused to the petitioner which cannot be adequately compensated in money but any such interim order shall if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order.

(5) Notwithstanding anything in clause(4) or clause(5) no interim order (whether by way of injunction or stay or in any other manner

hall be made, or in any proceedings relating to a petition under clause(1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government.

* * * *

227. Power of superintendence over all courts by the High Court.— (1) Every High Court shall have superintendence over all courts subject to its appellate jurisdiction.

* * * *

(5) Nothing in this article shall be constructed as giving to a High Court any jurisdiction to question any judgement of any inferior court which is not otherwise subject to appeal or revision.

* * * *

239B. Power of administrator to promulgate Ordinances during recess of Legislature.— (1)

(4) Notwithstanding anything in this Constitution, the satisfaction of the administrator mentioned in clause(1) shall be final and conclusive and shall not be questioned in any court on any ground.

* * * *

257A. Assistance to States by deployment of armed forces or other forces of the Union.— (1) The Government of India may deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any State.

(2) Any armed force or other force or any contingent or unit thereof deployed under clause(1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence, or control of the State Government or any officer or authority subordinate to the State Government.

(3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof deployed under clause (1) during the period of such deployment.

* * * *

PART XIVA TRIBUNALS

323A Administrative tribunals. (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may --

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment.

(f) repeal or amend any order made by the President under clause (3) of article 371D.

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the order of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

323B Tribunals for other matters —(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely.

(a) levy, assessment, collection and enforcement of any tax.

(b) foreign exchange, import and export across customs frontiers.

(c) industrial and labour disputes.

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way.

(e) ceiling on urban property.

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A.

(g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods.

(h) offences against laws with respect to any of the matters specified in sub-clauses (a) to (g) and fees in respect of any of those matters.

(i) any matter incidental to any of the matters specified in sub-clauses (a) to (h).

(3) A law made under clause (1) may—

(a) provide for the establishment of a hierarchy of tribunals

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals.

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals.

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals.

(e) provide for the transfer, to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment.

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.

* * * * *

329. Bar to interference by courts in electoral matters.—

Notwithstanding anything in this Constitution but subject to the provisions of article 329A—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House of either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

329 A. Special provision as to elections to Parliament in the case of Prime Minister and Speaker.

(1) Subject to the provisions of Chapter II of Part V [except sub-clause (e) of clause (1) of article 102], no election —

(a) to either House of Parliament of a person who holds the office of Prime Minister at the time of such election or is appointed as Prime Minister after such election;

(b) to the House of the People of a person who holds the office of Speaker of that House at the time of such election or who is chosen as the Speaker for that House after such election;

shall be called in question, except before such authority [not being any such authority as is referred to in clause (b) of article 329] or body and in such manner as may be provided for by or under any law made by Parliament and any such law may provide for all other matters relating to doubts and disputes in relation to such election including the grounds on which such election may be questioned.

(2) The validity of any such law as is referred to in clause (1) and the decision of any authority or body under such law shall not be called in question in any court.

(3) Where any person is appointed as Prime Minister or, as the case may be, chosen to the office of the Speaker of the House of the People, while an election petition referred to in clause (b) of article 329 in respect of his election to either House of Parliament or, as the case may be, to the House of the People is pending, such election petition shall abate upon such person being appointed as Prime Minister or, as the case may be, being chosen to the office of the Speaker of the House of the People, but such election may be called in question under any such law as is referred to in clause (1).

(4) No law made by Parliament before the commencement of the Constitution (Thirty-ninth Amendment) Act, 1975, in so far as it relates to election petitions and matters connected therewith, shall apply, or shall be deemed ever to have applied to or in relation to the election of any such person as is referred to in clause (1) to either House of Parliament and such election shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void or has, before such commencement, been declared to be void under any such law and notwithstanding any order made by any court, before such commencement, declaring such election to be void, such election shall continue to be valid in all respects and any such order and any finding on which such order is based shall be and shall be deemed always to have been void and of no effect.

(5) Any appeal or cross appeal against any such order of any court as is referred to in clause (4) pending immediately before the commencement of the Constitution (Thirty ninth Amendment) Act, 1975, before the Supreme Court shall be disposed of in conformity with the provisions of clause (4).

(6) The provisions of this article shall have effect notwithstanding anything contained in this Constitution.

* * * * *

352. Proclamation of Emergency.

(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.

(2) A Proclamation issued under clause (1)—

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(2A) Where a Proclamation issued under clause (1) is varied by a subsequent Proclamation, the provisions of clause (2) shall, so far as may be, apply in relation to such subsequent Proclamation as they apply in relation to a Proclamation issued under clause (1).

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

(4) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or internal disturbance or imminent danger of war or external aggression or internal disturbance, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.

(5) Notwithstanding anything in this Constitution.—

(a) the satisfaction of the President mentioned in clause (1) and clause 3) shall be final and conclusive and shall not be questioned in any court on any ground ;

(b) subject to the provisions of clause (2), neither the Supreme Court nor any other court shall have jurisdiction to entertain any question, on any ground, regarding the validity of—

(i) a declaration made by Proclamation by the President to the effect stated in clause (1) ; or

(ii) the continued operation of such Proclamation.

* * * * *

356 Provisions in case of failure of constitutional machinery in States: (1)

* * * *

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the people takes place during any such period of one year and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(5) Notwithstanding anything in this Constitution the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.

* * * *

358. Suspension of provisions of article 19 during emergencies.— While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect :

Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.

359. Suspension of the enforcement of the rights conferred by part III during emergencies.— (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(1A) While an order made under clause (1) mentioning any of the rights conferred by Part III is in operation, nothing in that part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect :

Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken under this article in relation to or any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.

360. Provisions as to financial emergency.—(1) * * *

(2) The provisions of clause (2) of article 352 shall apply in relation to a Proclamation issued under this article as they apply in relation to a Proclamation of Emergency issued under article 352.

* * * *

(5) Notwithstanding anything in this Constitution.—

(a) the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground ;

(b) subject to the provisions of clause (2), neither the Supreme Court nor any other Court shall have jurisdiction to entertain any question on any ground, regarding the validity of—

(i) a declaration made by proclamation by the President to the effect stated in clause (1) ; or

(ii) the continued operation of such Proclamation.

* * * *

368. Power of Parliament to amend the Constitution and procedure therefor. — (1)

* * * *

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill :

Provided that if such amendment seeks to make any change in—

(a) article 54 article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the List or in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislature of not less than one-half of the States by resolutions to that effect

passed by those Legislatures before the bill making provision for such amendment is presented to the President for assent.

* * * * *

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

* * * * *

371.F. Special provisions with respect to the State of Sikkim.—Notwithstanding anything in this Constitution.

* * * * *

(c) in the case of the Assembly deemed to be the Legislative Assembly of the State of Sikkim under clause (b), the references to the period of six years in clause (1) of article 172 shall be construed as references to a period of five years and the period of five years shall be deemed to commence from the appointed day;

* * * * *

SEVENTH SCHEDULE

[Article 246]

List I—Union List

* * * * *

2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.

* * * * *

List II—State List

1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

2. Police (including railway and village police) subject to the provisions of entry 2A of List I.

* * * *

41. State public services ; State Public Service Commission.

* * * *

List III-Concurrent List

* * * *

17A. Forests.

* * * *

25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65, and 66 of List I ; vocational and technical training of labour.

* * * *

NINTH SCHEDULE

[Article 31B]

* * * *

87. The Representation of the People Act, 1951 (Central Act 43 of 1951), the Representation of the People (Amendment) Act, 1974 (Central Act 58 of 1974) and the Election Laws (Amendment) Act, 1975 (Central Act 40 of 1975).

* * * *

92. The Maintenance of Internal Security Act, 1971 (Central Act 26 of 1971).

* * * *

130. The Prevention of Publication of Objectionable Matter Act, 1976 (Central Act 27 of 1976.)

* * * *

EXTRACTS FROM THE CONSTITUTION (FORTY-SECOND AMENDMENT)
Act, 1976

* * * * *

18. Amendment of article 100.—In article 100 of the Constitution clauses (3) and (4) shall be omitted.

19. Amendment of article 102.—In article 102 of the Constitution for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:—

“(a) if he holds any such office of profit under the Government of India or the Government of any state as is declared by Parliament by law to disqualify its holder,”

* * * * *

21. Amendment of article 105.—In article 105 of the Constitution, for clause (3), the following clause shall be substituted, namely:—

“(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be those of that House, and of its members and committees, at the commencement of section 21 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of Parliament from time to time.”

22. Amendment of article 118.—In article 118 of the Constitution, in clause (1), after the words “its procedure”, the brackets and words “(including the quorum to constitute a meeting of the House)” shall be inserted.

* * * * *

31. Amendment of article 189.—In article 189 of the Constitution clauses (3) and (4) shall be omitted.

32. Amendment of article 191.—In article 191 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:—

“(a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule as is declared by Parliament by law to disqualify its holder.”

* * * * *

34. Amendment of article 194.—In article 194 of the Constitution, for clause (3), the following clause shall be substituted, namely:—

“(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be those of that House, and of its members and committees, at the commencement of section 34 of the Constitution (Forty-second Amendment) Act, 1976, and as may be, evolved by such House of the Legislature of a State, so far as may be, in accordance with those of the House of the People, and of its members and committees where such House is the Legislative Assembly and in accordance with those of the Council of States, and of its members and committees where such House is the Legislative Council.”.

35. Amendment of article 208.—In article 208 of the Constitution, in clause (1), after the words “its procedure”, the brackets and words “(including the quorum to constitute a meeting of the House)” shall be inserted.

* * * * *

58. Special provisions as to pending petitions under article 226.—

(1) Notwithstanding anything contained in the Constitution, every petition made under article 226 of the Constitution before the appointed day and pending before any High Court immediately before that day (such petition being referred to in this section as a pending petition) and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition before that day shall be dealt with in accordance with the provisions of article 226 as substituted by section 38.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), every pending petition before a High Court which would not have been admitted by the High Court under the provisions of article 226 as substituted by section 38 if such petition had been made after the appointed day, shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition shall stand vacated.

Provided that nothing contained in this sub-section shall affect the right of the petitioner to seek relief under any other law for the time being in force in respect of the matters to which such petition relates and in computing the period of limitation, if any for seeking such relief, the period during which the proceedings relating to such petition were pending in the High Court shall be excluded.

(3) Every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day, on, or in any proceeding relating to, a pending petition [not being a pending petition which has abated under sub-section (2)], and which is in force on that day, shall, unless before the appointed day copies of such pending petition and of documents in support of the plea for such interim order had been furnished to the party against whom such interim order was made and an opportunity had been given to such party to be heard in the matter, cease to have effect (if not vacated earlier).—

(a) on the expiry of a period of one month from the appointed day, if the copies of such pending petition and the documents in support of the plea for the interim order are not furnished to such party before the expiry of the said period of one month; or

(b) on the expiry of a period of four months from the appointed day, if the copies referred to in clause (a) have been furnished to such party within the period of one month referred to in that clause but such party has not been given an opportunity to be heard in the matter before the expiry of the said period of four months.

(4) Notwithstanding anything contained in sub-section (3), every interim order (whether by way of injunction or stay or in any other manner) which was made before the appointed day on or in any proceedings relating to a pending petition [not being a pending petition which has abated under sub-section (2)], and which is in force on that day, shall, if such order has the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence

punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government, stand vacated.

Explanation.—In this section, ‘appointed day’ means the date on which section 38 comes into force.

59. Power of the President to remove difficulties.—

(1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of the President's assent to this Act to the provisions of the Constitution as amended by this

Act) the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution, as appear to him to be necessary or expedient for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiry of two years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be, after it is made, be laid before each House of Parliament.

**FINANCIAL MEMORANDUM
TO THE CONSTITUTION (FORTY-FIFTH AMENDMENT)
BILL, 1978.**

Sub-clause (a) of clause 45 of the Bill seeks to insert an additional proviso in clause (2) of article 368 of the Constitution. This proviso provides for a requirement as to approval by the people of India at referendum with respect to amendments of the nature specified therein. According to the amendments proposed in sub-clause (b) of clause 45, Parliament may from time to time by law make provision with respect to the matters relating to, or in connection with, such referenda, including the preparation of the rolls of voters. The holding of a referendum for the aforementioned purposes will involve expenditure. The expenditure which will be involved will depend upon the provisions which Parliament may make with respect to such referenda.

However, as the steps involved in holding a referendum such as the preparation of the rolls of voters, the conduct of the poll, etc., are similar to those involved in general elections to Lok Sabha, the expenditure which a referendum would involve would be approximately the same as that involved in the conduct of general elections to Lok Sabha. On this basis, it is estimated that the expenditure on the preparation of the rolls of voters will be approximately Rs. 7 crores and on the conduct of a referendum will be approximately Rs. 23 crores. In the case of general elections, half of the expenditure on the preparation of the rolls of voters is shared by the State Governments. However, if the rolls of voters are revised and prepared for the purpose of a referendum only, the full expenditure on that account will be borne by the Central Government. Thus, the total expenditure in respect of each referendum is likely to be to the tune of Rs. 30 crores, as a rough estimate. This expenditure will be of a recurring nature as the same will have to be incurred on each occasion when a referendum becomes necessary. Having regard to the nature of amendments which require to be approved at a referen-

dum, the possibility of any such amendments being initiated is very remote. Further, the electoral rolls maintained for purposes of elections to Lok Sabha can be utilised for the purposes of the referendum. If a referendum is held in the same year in which a general election takes place, the electoral rolls will not require much revision and, as such, there will be no expenditure on the revision and preparation of the electoral rolls on such referendum. If, however, the referendum is held simultaneously with the General Elections, the additional expenditure, which would be incurred, will be negligible. The law which Parliament may make with respect to matters relating to referenda will no doubt take into account the various factors which will help in reducing the expenditure on account of referenda. There will be no non-recurring expenditure.

Sd/-

(SHANTI BHUSAN)

Minister for Law, Justice and Company Affairs

2-8-1978

LOK SABHA
CORRIGENDA
to
THE CONSTITUTION (FORTY-FIFTH AMENDMENT)
BILL, 1978
As introduced in Lok Sabha
(REPRINT)

1. Page 2, in the marginal heading to clause 5,—for 'artele' read 'article'
2. Page 5, line 7,—for 'articles' read 'article'
3. Page 10, line 35,—for 'disturbances' read 'disturbance'
4. Page 10, line 36,—for 'were' read 'where'
5. Page 12, line 23,—for 'sid' read 'said'
6. Page 16, line 34,—for 'rigrts' read 'rights'
7. Page 16, line 38,—for 'wren' read 'when'
8. Page 16, line 40,—for 'round' read 'ground'
9. Page 17 line 11 from bottom,—after 'deems' insert 'it'
10. Page, 19, line 3,— for 'omittng' read 'omitting'
11. Page 19, line 10,—for 'amogst' read 'amongst'
12. Page 29, in the marginal heading to article 38,—for 'special' read 'social'
13. Page 34, line 1,—for 'injunction of' read 'injunction or'
14. Page 39, line 9,—for 'disturbances' read 'disturbance'
15. Page 40, line 13 from bottom,—for 'its' read 'is'

NEW DELHI;

December 12, 1978

Agrahayana 21, 1900 (Saka)